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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 267

267

WILLIAM FARRELL,

Petitioner,

v.

UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION, LUCKENBACH STEAMSHIP COMPANY, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Wiliam Farrell, seaman in the Merchant Marine, for a writ of certiorari to review a decree of the Circuit Court of Appeals for the Second Circuit, respectfully shows:

Summary Statement of Matter Involved

This petition for certiorari is made upon a typewritten record in view of the petitioner's destitute condition,—the facts of the impoverished condition of the petitioner and the petitioner's family are stated in a petition, dated De-

cember 2, 1947, to proceed upon a typewritten record which was granted by the court, there being no opposition (R. 294).

The petitioner urges a review by this Court of the law governing his cause for maintenance and cure and for wages as applied to the facts in his case as those facts were stated by the Circuit Court of Appeals for the Second Circuit. Petitioner does not urge review of the law or facts relating to his cause for negligence. The facts of the case on the issues of maintenance and cure and wages are not in dispute (R. 236, 250). We therefore summarize only those facts relating to the issues of maintenance and cure and wages.

Maintenance and cure. During the course of his wartime service in the Merchant Marine, and while temporarily in a replacement pool for seamen at Naples, Italy, and on December 16, 1943, Farrell signed on the "S. S. James E. Haviland" as a seaman with the grade of oiler. The "Haviland" was owned and operated by the United States with the Luckenbach Steamship Company as general managers. Farrell was then about twenty-two years old (R. 281, 237).

On February 5, 1944, while the "Haviland" was docked at Palermo, Italy, Farrell received shore leave late in the afternoon and left the ship with three companions. Palermo was then in a damaged condition following its capture from the enemy. The invasion of Italy was then in progress, and dimout or blackout regulations were required (R. 281, 239).

Farrell started to return to the "Haviland" with another seaman about eight o'clock that evening. It was raining and they became lost in the city but were directed to the port area by a local policeman. They arrived at Gate 1 of the area which was about a mile distant from Gate 5, the gate by which they had left and which they were trying to find. They were admitted to the port area through Gate 1 upon presentation of their passes to the sentry on duty and endeavored to make their way to the ship (R. 282, 240).

While Farrell and his companion were walking along a muddy road in the semi-darkness on opposite sides of the road in order to be safe from approaching vehicles running with dimmed or no lights, Farrell fell into a graving dock (R. 282, 241).

From the time of the accident until June 30, 1944, Farrell was in several government hospitals, and on that date he was discharged at Norfolk, Virginia as "completely disabled" (R. 283, 288, 250).

At the time of the trial, June 10-12, 1947 (R. 269), it was shown that as a result of the fall, Farrell became permanently blind and subject to recurring pain, especially in his head. It was also found that he suffered from convulsive attacks coming from traumatic epilepsy, the result of the skull fracture, which may well become worse as he grows older (R. 282, 241, 250). He was always a healthy individual before this accident (R. 251).

Both of the lower courts held that Farrell would continue to need treatment and medical care from time to time to alleviate his attacks of headaches and epileptic convulsions, and that these may grow worse (R. 289, 250).

Farrell was awarded what he had spent for medical treatment and medicines up to the date of trial and in addition was allowed maintenance to December 20, 1944, equivalent to six months after his discharge from the Norfolk hospital, as the full measure of the responsibility of the respondents for Farrell's maintenance and cure (R. 288, 255).

It is believed that Farrell is entitled to "a more liberal application of the rule" of maintenance and cure as stated in the *Calmar* case, 303 U. S. at page 530.

Wages. Farrell enlisted in the Merchant Marine on November 15, 1942. After a period of training he shipped on the "S. S. Johns Hopkins", owned and operated by the United States, as an oiler on September 15, 1943. He left the "Hopkins" at Naples, Italy, to enter a hospital for ten

days and was then assigned to the replacement pool in Naples (R. 281, 236, 237).

The rate of pay received by Farrell on the "Hopkins" was $110 per month and when he later signed on the "Haviland" at Naples on December 16, 1943, he signed on in the same grade of oiler and with the same rate of pay. He was so engaged at the time of his accident on February 5, 1944, which completely disabled him (R. 281, 237). The controversy in this case arises with respect to his wages due from the "Haviland" only.

The shipping articles on the "Haviland" provided (R. 285, Exhibit 3, introduced at page 48 of the typewritten record):

> "It is agreed between the master and seamen * * * of the S.S. James E. Haviland * * * now bound from the Port of Philadelphia, to a point in the Atlantic Ocean to the eastward of Phila. and thence to such ports and places in any part of the world as the master may direct * * * and back to a final port of discharge in the United States, for a term of time not exceeding 12 (twelve) calendar months."

The shiping articles it will be noted did not use the word "voyage" but both courts below concluded that the "voyage" of the "Haviland" ended May 28, 1944 and that Farrell was entitled to wages only until that time (R. 285, 255). Farrell claims to be entitled to his wages for the full twelve months of his contract or until December 16, 1944.

The Basis of the Court's Jurisdiction

The jurisdiction of this Court is based upon Section 240 (a) of the Judicial Code as amended, Title 28, U. S. C. A. Section 347 (a).

The date of the judgment sought to be reviewed is May 10, 1948 (R. 290). A petition for a rehearing was entertained by the Circuit Court and denied on June 11, 1948 (R. 296).

Questions Presented

(1) Was there a correct interpretation by the Circuit Court of Appeals in this case of the rule of maintenance and cure as applied to a seaman injured in the service of his ship and resulting in permanent and total disability?

(2) Is the petitioner, a seaman injured in the service of his ship resulting in permanent and total disability and admittedly in need of medical care from time to time, entitled to "a more liberal application of the rule" of maintenance and cure than he received in this case?

(3) Did the Circuit Court properly construe the petitioner's term of service as stated in his shipping articles?

(4) Was the seaman Farrell deprived of the benefit of the provisions contained in 46 U. S. C. A. Sections 572, 570?

Reasons Relied Upon for the Allowance of the Writ

The decision of the Circuit Court of Appeals for the Second Circuit in this case on the question of maintenance and cure is in conflict with the applicable decision of this Court in *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525 (1938), and is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Loverich* v. *Warner*, 118 F. 2d 690 (1941); cert. denied 313 U. S. 577.

The opinion of the Circuit Court (R. 288), confesses considerable difficulty in determining the meaning of this Court and the law intended to be declared by this Court in the *Calmar* case on the subject of maintenance and cure, and this would seem to indicate a need for a clarifying statement by this Court.

We submit that the pertinent question of the issue of maintenance and cure in this case is whether a seaman

totally and permanently disabled in the service of his ship and admittedly in need of medical care from time to time, is entitled to a more liberal application of the rule than merely maintenance and cure to such time as he is as "cured as he ever can be", and that that question was left open in the *Calmar* case and is a question of great importance not only to the petitioner but to great numbers of seamen, and that that question has not been but should be determined by this court.

The decision of the Circuit Court of Appeals for the Second Circuit in this case on the question of wages is in direct conflict with the decision of the Third Circuit Court of Appeals in the case of *Jones* v. *Waterman S.S. Corp.*, 155 F. 2d 992 (1946).

Unless corrected by this Court, a way has been opened for shipowners and operators to avoid and evade the provisions of 46 U. S. C. A. Sections 572 and 570 which were drafted for the protection of the seaman.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit should be granted.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Opinions of the Courts Below

The opinion of the Circuit Court of Appeals for the Second Circuit in this case is reported at 167 F. 2d 781. The opinion of the District Court for the Southern District of New York appears in the typewritten record at pages 236-255.

Specification of Errors

(1) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

> "Generally speaking, however, the duty of the ship owner to provide maintenance and cure for the seaman 'does not extend beyond the time when he is as completely cured as he ever can be' " (R. 286).

(2) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

> "It is sufficient to say here that, even if the appellant's injuries were 'caused' by his 'employment', we think the general rule applicable" (R. 287).

(3) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

> "Were it not for the above quoted language in the *Calmar* case we would have no hesitancy in affirming the decree below. That language, however—in conjunction with the fact that the reversal of the decree was 'without prejudice to any later suit by respondent to recover maintenance and cure to which he may then be entitled'—is conceivably susceptible to the interpretation that, though the seaman is as cured as he ever can be, he may still recover such amounts as are needed in a definitely ascertainable period in the immediate future to provide care of a clearly determinable kind. But if this interpretation were the correct one, the language would seem to be inconsistent with that on page 530 of the opinion stating in effect that the duty to provide maintenance and cure ends when the seaman is as completely cured as he ever can be. We take it, therefo , that, though Taylor, the seaman

in the *Calmar* case, was affected with an 'incurable malady', he was not at the time of the trial as cured as he could ever possibly be. Indeed, the Court said, 'Care and treatment at frequent intervals, with periodic medical observation of the patient, are of aid in arresting its (the disease's) progress.' Page 526. Moreover, as the Circuit Court of Appeals stated, 92 F. 2d 84, 87, the incurable disease from which Taylor suffered was 'of a progressive nature' so that it could not be said that 'the ordinary means which medical science affords for the treament and care of this disease will be exhausted prior to his death.' Here that is not the case" (R. 288).

(4) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

"To allow the appellant his wages in full to the end of the voyage only instead of for a full year was also correct" (R. 285).

(5) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

"The voyage was to end in the United States and did end there at the Port of New York on March 28, 1944. It seems clear that the agreement was for employment for the duration of the voyage only and not for twelve months, the cause, 'for a term of time not exceeding 12 (twelve) calendar months,' serving to limit the period for which the appellant was employed, not to extend it beyond the end of the voyage" (R. 285).

THE ARGUMENT

POINT I

Farrell's case being that of injuries received in the service of the ship, the Court should apply a more liberal rule of maintenance and cure than merely that to such time as he is as completely cured as he ever can be.

The difficulty here is in the application of the law laid down in the *Calmar* case, 303 U. S. 525 (1938).

In the *Calmar* case, Mr. Justice Stone writing for the Court considered the point left open in the case of *The Osceola*, 189 U. S. 158 (1903), as expressed in the rule, stated on page 175:

> "1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, *at least* so long as the voyage is continued.' (Emphasis supplied.)

and was applying this law to the case of an incurable disease manifesting itself during the employment, but not caused by it. The seaman had stubbed his toe in the engine room and had alleged that that accident was the cause of his disease known as Buergers Disease, and the Trial Court had held and the Supreme Court had agreed, page 529, that the disease was not caused by the injury to his foot.

Two classes of chronic cases were discussed in the *Calmar* case and were described at page 529 as:

(1) where "the efficient cause of the injury or illness was some proven act of the seaman in the service of the ship";

(2) where "it was deemed enough that he was incapacitated when subject to the call of duty as a seaman, and that his incapacity continued after the voyage had ended".

The Court then states the question involved as follows, page 530 (clearly referring to the second class):

> "There remain the questions whether in the case of a chronic illness the duty continues so long as medical attendance and care are beneficial, until death if the need lasts so long, and whether a lump sum may be awarded to defray the cost of meeting the anticipated need."

The Court then refers to both classes of cases and states the rule applicable to each class. In stating the rule applicable to class (1), the Court stated at page 530:

> "In answering the first we lay to one side those cases where the incapacity is caused by the employment. As to them considerations not present here may apply, which might be thought to require a more liberal application of the rule than we think is called for in this case."

In stating the rule applicable to class (2), the Court states at page 530:

> "We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing, care, and medical treatment. This would satisfy such demands of policy as underlie the imposition of the obligation. Beyond this we think there is no duty, at least where the illness is not caused by the seaman's service."

But the Court modifies this stand as to the rule applicable to class (2) in a concluding paragraph, page 531, where it is stated:

> "The seaman's recovery must therefore be measured in each case by the reasonable cost of that maintenance and cure to which he is entitled at the time of trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for the maintenance and cure of a kind and for a period which can be definitely ascertained."

If this is so, i.e., if the classes of maintenance and cure cases referred to in the *Calmar* case and the rules applicable thereto are as we have stated them, then it can not be true as the Circuit Court has stated in its opinion of May 10, 1948 (R. 287), that "It is sufficient to say here that, even if the appellant's injuries were 'caused' by his 'employment,' we think the general rule applicable".

It can not be true, because the Supreme Court took the pains to state the two classes and the different rules applicable to each.

The words on page 531 of the *Calmar* case, reading "The seaman's recovery must therefore be measured in each case * * *" are doubtless the words that lead this Court to adopt the interpretation that the Supreme Court was announcing one rule for both classes of cases. It is submitted, however, that the Supreme Court was merely referring to each case of the latter class of cases mentioned; to wit, "incapacitated when subject to the call of duty as a seaman * * * incapacity continued after the voyage * * *" or as later and more specifically defined "the incurable disease which manifests itself during his employment but is not caused by it".

The Supreme Court had "laid aside" the first class of cases of "proven acts of the seaman in the service of the ship", or as later referred to "where the incapacity is

caused by the employment" as to which "a more liberal application of the rule" might be called for.

We submit that the Supreme Court was referring to just such an injury as Farrell sustained in this case and was distinguishing it from the disease, bodily infirmity and sickness cases, and other cases not "incurred" in the service of the ship,—cases which manifest themselves during the employment but are not caused by it, such as the Court had before it in the *Calmar* case.

This is clearly shown by the three cases the Supreme Court referred to, middle of page 530. In the first of these cases, *Reed v. Canfield*, Fed. Cases, No. 11641 (C. C. A. Mass., 1832), the injuries consisted of frozen feet causing amputation of the toes and were due to the seaman being blown out to sea in a small boat while returning to the ship, a whaler. Judge Story decided in this case that the injuries were received in the service of the ship and affirmed an award of maintenance and cure incurred during the year between the time of the injury and the trial.

In the case of *The J. F. Card*, 43 F. 92 (D. C. E. D. Mich., 1890), referred to by the Supreme Court, the case was that of injuries apparently not chronic, consisting of a capsular fracture or bruise sustained by being hit by a boom and falling to the deck, while reefing a mainsail on the ship on Lake Erie. There was no question raised as to whether the injury was caused by the employment. The only question was as to the duration of the maintenance and cure. The Court reduced an award of seven weeks' maintenance and cure and allowed only physicians' fees and return fare, pointing out that the seaman could have been treated, free of expense to himself and the owners of the ship, at a marine hospital and stating that the rule adopted in *Reed v. Canfield* was for the protection of seamen on long ocean voyages and not to the short trips customary in Great Lakes shipping.

The third and last case referred to by the Supreme Court was a case from the Second Circuit, *The Bouker No. 2*, 241 F. 831 (1917), and was a case of pneumonia, the seaman having felt unwell a few days before he declared himself too sick to work and went home. The seaman was an engineer on a steam tug hauling garbage scows, and making two trips per day in good weather, at a stipend per week amounting to about $100.00 per month, plus food and quarters while on the tug. The Court allowed maintenance and cure for as long as "he would have remained in the marine hospital had he gone there". Judge Hough stated in this case that the limits of cure or care must always depend upon the facts of each particular case. The seaman had sued in *forma pauperis* and had alleged negligence because of the dampness and unwholesome condition of the sleeping quarters. The libel was not sustained on the negligence, but the owners of the steam tug appealed the award of maintenance and cure. The seaman had apparently recovered at the time of trial.

All three of these cases relied upon by the Supreme Court in the *Calmar* case seem to us, therefore, to be cases where the incapacity was caused by the employment and, therefore, the meaning of Supreme Court's opinion must have been that the different and more liberal rule referred to applied to that class of cases.

The citation by the Second Circuit of the case of *Luksich* v. *Misetich*, 140 F. 2d 812 (C. C. A. 9, 1944), with denial of certiorari, 322 U. S. 761, as the sole authority of the Court's ruling allowing maintenance and cure only to such time as the seaman is as cured as he ever can be, would seem to indicate that the Second Circuit considered the denial of the certiorari as indicating a retraction or change of opinion by the Supreme Court as to the view stated in the *Calmar* case.

The *Luksich* case, however, would seem to be insufficient authority for this proposition, because the seaman there

fisherman who had signed an agreement to fish on for the tuna season only,—a short season. This, therefore, be a special case, as pointed out in *The ard* and *The Bouker No. 2, supra.* See also the stat- provision in *U. S. C. A., Title 46,* Sect. 566, making re fisherman a special case.

so seems that the Ninth Circuit did not consider the case authority for situations like that of the case because in the later case of *Seville* v. *United States,* 2d 296, 299 (1947), a case of fractures of bones in d and wrist sustained while unloading ship, in which nce was not established, the statement in the *Luk-* se is referred to as dictum.

hermore, the only other citation of the *Luksich* case, han the one just cited and in the case at bar, is by preme Court of Texas in the case of *Prereaux* v. *Vacuum Oil Co.,* 192 S. W. 2d 138 (1946), in a ction, and by way of dictum.

if the case at bar were a case of the second class, an incapacity manifesting itself during the employ- t not caused by it, it is submitted that too harsh a s been applied by applying the criteria of *improve-* ther than of *benefit,* or at least, of *need.* All three e criteria are found in the quotations from the case, *supra.*

it Judge Clark, by way of a strong dissenting opin- he case of *Lov rich* v. *Warner,* 118 F. 2d 690, 697 A. 3, 1941), took issue as to whether the criteria be improvement, as he concluded, or benefit, as the y of the Court had held. With this strong dissent avor, a petition for certiorari was presented to the upreme Court and certiorari was denied, 313 U. S.

overich case was that of a throat cancer manifest- f during employment, but not claimed to be caused

by it and, although as the Court pointed out, there was some question about it, this case therefore may be taken as a case of the second class. If this liberal rule of benefit applies to the second class of cases, then a fortiori, it would apply to the first class, as to which a more liberal rule is required.

The Circuit Court stated as a fact, in its opinion (R. 289), that "the appellant will from time to time require some medical care to alleviate his attacks". Certainly by alleviating his attacks, he would benefit, and who is to say that such alleviation is not "needful", particularly as to a seaman, a ward of the Court?

We do not argue at length the question as to whether the injuries to Farrell were caused by the employment as we consider from the Circuit Court's opinion that the Circuit Court was fairly well persuaded that they were.

We regard the underlying facts as settled by the holding of the Circuit Court (R. 287), that Farrell was "on shore leave in the process of returning to his ship" and that he was not injured "as a result of intoxication or other wilful misbehaviour.

The facts being as found, the case appears to us to be on all fours with *Reed* v. *Canfield, supra,* and amply supported by *Aguilar* v. *Standard Oil Co.* (Case No. 454), 318 U. S. 724, 726, 736 (1943). See also *Smith* v. *U. S.*, 167 F. 2d 550 (C. C. A. 4, 1948).

POINT II

The petitioner should have been allowed wages for the full twelve months stipulated in his shipping articles.

The pertinent portions of Farrell's shipping articles are quoted in the opinion of the Circuit Court (R. 285), and *supra,* page 4.

It will be noted that the Circuit Court in its opinion erroneously uses the word "voyage" as though the word "voyage" were contained in that agreement, whereas the fact is that it is not; but also and more important apparently refers to that word as having some well defined and understood meaning, not explained by the Circuit Court. It is submitted that the term "voyage" is used in various senses and properly refers to the whole term of the mariner's employment, *Enochasson* v. *Freeport Sulphur Co., et al.*, 7 F. 2d 674, 675 (D. C. S. D. Texas, 1925), and that if this is so, there was manifest error in the decision.

A much more serious error, however, appears in the Circuit Court's decision on the subject of wages. The only words in the shipping articles covering the term, as distinguished from the place of the employment, are those reading "for a term of time not exceeding 12 (twelve) calendar months".

U. S. Code, Title 46, Section 572, states:

> "A master of a vessel in the foreign trade may engage a seaman at any port in the United States, in the manner provided by law, to serve on a voyage to any port, or for the round trip from and to the port of departure, or for a definite time, whatever the destination. The master of a vessel making regular and stated trips between the United States and a foreign country may engage a seaman for one or more round trips, or for a definite time, or on the return of said vessel to the United States may reship such seaman for another voyage in the same vessel, in the manner provided by law."

U. S. Code, Title 46, Section 570, states:

> "Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer shall, before carrying such seaman to sea, procure the sanction of such officer,

> and shall engage seamen in his presence; and the rules governing the engagement of seamen before a shipping commissioner in the United States, shall apply to such engagements made before a consular officer; and upon every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise duly made."

It is only as an agreement for employment for 12 (twelve) calendar months, therefore, that this agreement meets the statutory requirements, *i. e.*, "for a definite time."

The Clarification Act; U. S. Code, Title 50, Appx. Section 1291, gives to seamen employed through the War Shipping Administration the rights of seamen on privately owned and operated vessels.

The Circuit Court of Appeals, Second Circuit, refused to recognize as authority the previous decision of the Third Circuit in *Jones* v. *Waterman S. S. Corp.,* 155 F. 2d 992 (1946, affirmed 318 U. S. 724), upon the ground that the agreement there involved covered one or more voyages as the master might direct within a limited term. The authority upon which the Third Circuit relied in the *Jones* case, however, that of *Enochasson* v. *Freeport Sulphur Co., et al.,* 7 F. 2d 674 (D. C. S. D. Texas, 1925), contains a long and learned discussion of the subject.

The shipping articles in the *Enochasson* case provided for:

> "Trading to or between the United States and the Republic of Mexico or the West Indies as the master may direct and such other ports or places in any part of the world as the master may direct and back to a final port of discharge in the United States for a term of time not to exceed six calendar months."

These articles, therefore, were very similar to those at bar in providing for going to "such other ports or places in any part of the world as the master may direct."

The libellant in the *Enochasson* case had served on the vessel for three months and ten days and had made several voyages between Mexico and Texas and Cuba and Texas. He was awarded wages for the full six months. The *Enochasson* case was also cited and followed by the Ninth Circuit in the later case of *Mason* v. *Evanisevich*, 131 F. 2d 858 (1942).

The articles as they are written by the respondents-appellees relating to the description of the voyage (U. S. C. A. Title 46, Sect. 713, Table A), and using the construction put upon them by the Circuit Court of Appeals for the Second Circuit, would permit the employer to terminate the employment when the seaman falls ill or is injured in the next port of discharge in the United States, or to continue on if the seaman were then able to serve,—certainly a one-sided contract.

The construction adopted by the Circuit Court of Appeals also requires a reading into the articles, after the words "thence to such ports and places in any part of the world as the master may direct", the additional words "other than the United States."

The seaman having a legal obligation to serve for twelve months, if required by the respondents, there should be, we submit, the correlative obligation that the respondents under the rules should pay his wages during that time. Otherwise the seaman is placed in a position of unfair advantage.

The construction of the articles adopted by the Second Circuit would as the Court pointed out in *Shields* v. *U. S.*, 73 F. Supp. 862, 867 (D. C. E. D. Pa., 1947), permit the seamen to leave the ship at the first port in the United States after leaving Philadelphia,—obviously not the intention.

In *The Thomas Tracy*, 24 F. 2d 372 (C. C. A. 2, 1928), the Court stated, page 374: "The articles when in doubt are most strictly construed against the ship". There the period of employment was construed as one voyage, but this was to protect the seaman against a charge of desertion and was based on the seaman's own testimony that he believed the employment to be merely for one round trip.

The normal and usual course, however, is for the employment to continue after the round trip, *Labor Board* v. *Waterman S. S. Corp.*, 309 U. S. 206 (1939).

Even aside from the duties of the Admiralty Court as guardian of the rights of seamen, the Court will not, in the exercise of the equity powers which it has in admiralty, enforce a one-sided agreement. In *Moran* v. *Standard Oil Co.*, 211 N. Y. 187 (1914), Justice Cardozo stated, page 195:

> "The trial judge held that the contract imposed no obligation on the defendant to employ the plaintiff for five years, and that at the defendant's option it was terminable at will. We cannot accept that construction of its meaning. An intention to make so one-sided an agreement is not to be readily inferred. (Sanford v. Brown Brothers Co., 208 N. Y. 90.) The contract was drawn by the defendant's lawyers and was tendered to the plaintiff with the assurance, as he says, that his future for the next five years would be secure. Since the language is the defendant's we must construe it, if its meaning is doubtful, most favorably to the plaintiff."

The *Moran* case was followed with approval by the Second Circuit in the case of *Thomas A. Edison, Inc.* v. *Blackman Distributing Co.*, 66 F. 2d 722, 728 (1933); by the Third Circuit in the case of *A. M. Webb & Co., Inc.* v. *Robert P. Miller Co.*, 157 F. 2d 865, 868 (1946); by the Sixth Circuit in *Bach et al.* v. *Friden Calculating Machine Co., Inc.*, 155 F. 2d 361, 365 (1946); by the Eighth Circuit in *Marriman*

Medical Supply, Inc. v. *Ft. Dodge Serum Co.*, 47 F. 2d 458, 463 (1931).

The case of *O'Brien* v. *Miller*, 168 U. S. 287, 297-299 (1897), construing a bottomry bond is to the same effect.

In the single authority which the Second Circuit relied upon, *The Ipswich*, 46 F. 2d 136 (D. C. Md., 1930), the articles read, page 138:

> "• • • now bound from the Port of • • • Baltimore, Md., to Pacific Coast port via Atlanta Coastwise, and such other ports and places in any part of the world as the Master may direct, and back to a final port of discharge and/or loading port in the United States on Atlantic or Gulf Coast for a term of time not exceeding 12 calendar months."

The District Judge stated as to these articles, page 138:

> "Here the articles clearly call for a voyage from Baltimore to the Pacific Coast and back to a final port of discharge on the Atlantic Coast."

To us, *The Ipswich* articles are clearly different and inapplicable to our case. The Second Circuit's opinion neglects to give any effect whatever to the words "and such *other* ports and places in any part of the world as the Master may direct, and back to a final port of discharge and/or loading port in the United States on Atlantic or Gulf Coast". (Emphasis added.)

In any event, it is clear to us that the Circuit Court has resolved an ambiguity in libellant Farrell's articles in favor of the ship owners, whereas the decision should be directly to the contrary, the inferences arising from the ambiguity being construed as a matter of right against the author of the articles and in favor of the seaman.

Conclusion

We respectfully submit that Farrell has been clearly wronged by the misapprehension and misapplication of the applicable decisions of this Court; that his cause is just and that the principles of law involved are of considerable importance in the law of seamen generally; and that in view of the conflict of the decisions of the Circuit Courts on the subject, there is an apparent lack of harmony and uniformity in the law which only this Court can correct by a clarifying decision.

Respectfully submitted,

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